

Law Office of Nora J. Chorover

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March 16, 2015

BY CERTIFIED MAIL

Curt Spalding, Regional Administrator
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Gina McCarthy, Administrator
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Citizen Suit Coordinator
Environment and Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415
Certified # 7013 2250 0000 2096 4160

Re: Clean Water Action Complaint v. United Salvage Corp. of America, a/k/a
Framingham Salvage Corp.,
Case No. 1:15-CV-10871

Dear Sirs and Madam:

In accordance with Section 505(c)(3) of the Federal Water Pollution Control Act, 33 U.S.C. § 1365 (c)(3), and 40 CFR 135.4, we are enclosing a conformed copy of a complaint filed by this office on behalf of Clean Water Action against United Salvage Corp. of America, a/k/a Framingham Salvage Corp., on March 16, 2015.

Sincerely,



Nora J. Chorover

Enclosure

cc: Martin Suuberg, Commissioner
Massachusetts Department of Environmental Protection
One Winter Street
Boston, MA 02108
Certified # 7013 2250 0000 2096 4153

NORA J CHOROVER (Bar No. 547352)
Law Office of Nora J. Chorover
11 Green Street
Boston, MA 02130
617-477-3550

Filed Electronically 3/16/2015

Attorney for Plaintiff
CLEAN WATER ACTION

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CLEAN WATER ACTION,

Plaintiff,

v.

UNITED SALVAGE CORP. of
AMERICA, a/k/a FRAMINGHAM
SALVAGE CORP.,

Defendant.

Case No.

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND CIVIL PENALTIES**

(Clean Water Act,
33 U.S.C. §§ 1251 to 1387)

CLEAN WATER ACTION ("CWA") by and through its counsel, hereby alleges:

INTRODUCTION

1. This is a civil suit brought under the citizen suit enforcement provisions of the Clean Water Act, 33 U.S.C. § 1251, et seq. (the "Clean Water Act" or "the Act"). Plaintiff seeks declaratory judgment, injunctive relief, and other relief the Court deems appropriate with regard to discharges of polluted stormwater from the United Salvage Corp. ("Defendant" or "Framingham Salvage") facility in Framingham, Massachusetts into the Town of Framingham's municipal storm drain system and then to Beaverdam Brook, a tributary of Lake Cochituate, in violation of the Act.
2. Activities that take place at industrial facilities, such as material handling and storage, are often exposed to the weather. As runoff from rain or snow melt comes into contact with these materials, it picks up pollutants and transports them to nearby storm sewer systems, rivers, lakes,

or coastal waters. Stormwater pollution is a significant source of water quality problems for the nation's waters. The Massachusetts Department of Environmental Protection has determined that stormwater runoff represents the single largest source responsible for water quality impairments in the Commonwealth's rivers, lakes, ponds, and marine waters.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over the parties and the subject matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the United States).

4. On September 24, 2014, Plaintiff provided notice of Defendant's violations of the Act, and of its intention to file suit against Defendant (the "Notice Letter"), to the Administrator of the United States Environmental Protection Agency ("EPA"); the Administrator of EPA Region 1; the Commissioner of the Massachusetts Department of Environmental Protection ("DEP"); and to Defendant, as required by the Act, 33 U.S.C. § 1365(b)(1)(A).

5. More than sixty days have passed since notice was served on Defendant and the state and Federal agencies. Plaintiff is informed and believes, and thereupon alleges, that neither the EPA nor the Commonwealth of Massachusetts has commenced or is diligently prosecuting a court action to redress the violations alleged in this complaint. This action is not barred by any prior administrative penalty under Section 309(g) of the Act, 33 U.S.C. § 1319(g).

6. Venue is proper in the District Court of Massachusetts pursuant to Section 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located within this judicial district.

PARTIES

7. Plaintiff CLEAN WATER ACTION ("CWA") is a nationwide non-profit public benefit corporation organized under the laws of the District of Columbia, with its principal office located in Boston, Massachusetts. CWA has approximately 50,000 members who live, recreate and work in and around waters of the Commonwealth of Massachusetts, including Beaverdam Brook and

Lake Cochituate. CWA is dedicated to working for clean, safe and affordable water, protection of natural resources, the prevention of health-threatening pollution, the creation of environmentally safe jobs and businesses, and the empowerment of people to make democracy work. To further these goals, CWA actively seeks Federal and State agency implementation of the Act and other laws and, where necessary, directly initiates enforcement actions on behalf of itself and its members.

8. Members of CWA have a recreational, aesthetic and/or environmental interest in Beaverdam Brook and Lake Cochituate. One or more of such members who reside in the Framingham or Natick areas use and enjoy Beaverdam Brook or Lake Cochituate for recreation, sightseeing, wildlife observation and/or other activities in the vicinity of and downstream of Defendant's discharges. These members use and enjoy the waters into which Defendant has caused, is causing, and will continue to cause, pollutants to be discharged. The interests of CWA's members have been, are being, and will continue to be adversely affected by Defendant's failure to comply with the Clean Water Act, as alleged herein. The relief sought herein will redress the harms to Plaintiff caused by Defendant's activities.

9. Continuing commission of the acts and omissions alleged herein will irreparably harm Plaintiff and the citizens of the Commonwealth of Massachusetts, for which harm they have no plain, speedy, or adequate remedy at law.

10. Defendant United Salvage Corp. of America, a/k/a Framingham Salvage Corp., is a corporation organized under the laws of the Commonwealth of Massachusetts that operates a Scrap Recycling and Waste Recycling facility at 120 Waverley Street, Framingham, Massachusetts.

STATUTORY BACKGROUND

11. Pollutant Discharges without a Permit are Illegal. The Clean Water Act makes the discharge of pollution into waters of the United States unlawful unless the discharge is in compliance with certain statutory requirements, including the requirement that the discharge be permitted by the Federal Environmental Protection Agency ("EPA") under the National Pollutant

Discharge Elimination System (“NPDES”). Sections 301(a), 402(a) and 402(p) of the Act. 33 U.S.C. §§ 1311(a), 1342(a), 1342(p).

12. EPA Has Made Stormwater Discharges from Scrap Recycling and Waste Recycling Facilities Subject to the Requirements of EPA’s General Industrial Stormwater Permit. In order to minimize polluted stormwater discharges from industrial facilities, the Federal Environmental Protection Agency has issued a general industrial stormwater permit (“Stormwater Permit”). EPA’s Stormwater Permit was first issued in 1995, and was reissued in 2000 and 2008. See 60 Fed. Reg. 50804 (Sept. 29, 1995); 65 Fed. Reg. 64746 (Oct. 30, 2000); 73 Fed. Reg. 56572 (Sept. 29, 2008). The Stormwater Permit expired on September 29, 2013, but has been administratively continued by its own terms.

13. Scrap Recycling and Waste Recycling Facilities are Subject to the Requirements of this Stormwater Permit. Stormwater Permit, pg. 97 – 102 and Appendix D, pg. D-4.

14. Scrap Recycling and Waste Recycling Facilities Must Comply with the Monitoring and Reporting Requirements of the Stormwater Permit. The Stormwater Permit requires these facilities to, among other things:

- a. ensure that stormwater discharges do not cause or have the reasonable potential to cause or contribute to a violation of water quality standards, Stormwater Permit, pg. 16;
- b. implement specified measures to control discharges of pollutants specifically from scrap metal facilities, Stormwater Permit, pgs. 97- 99;
- c. conduct monitoring of stormwater discharges at all Facility outfalls in each of the first four full quarters of permit coverage for compliance with benchmark limitations applicable specifically to scrap recycling and waste recycling facilities, Stormwater Permit, pp. 36, 97-102;
- d. report all monitoring results for all Facility outfalls to EPA by specified deadlines, Stormwater Permit, pg. 41;
- e. conduct corrective action and continue benchmark monitoring after the average of 4 quarterly samples exceeds the EPA benchmark value, Stormwater Permit, pp. 18, 36;

- f. conduct routine facility inspections at least quarterly, conduct quarterly visual assessments, and perform annual comprehensive inspections to, among other things, sample and assess the water quality of the facility's stormwater discharges, ensure that stormwater control measures required by the Permit are functioning correctly and are adequate to minimize pollutant discharge, and timely perform corrective actions when they are not, Stormwater Permit, pp. 18-25;
 - g. timely prepare and submit to EPA annual reports that include findings from the annual comprehensive site inspections and documentation of corrective actions, Stormwater Permit, pp. 24, 41; and
 - h. comply with any additional state requirements, *see* Stormwater Permit, pp. 140-141.
15. Scrap Recycling and Waste Recycling Facilities Must Ensure that Their Control Measures Minimize Pollutant Discharges. Stormwater Permit, § 2 (pg. 12). Such facilities must modify their control measures as expeditiously as practicable whenever they find they are “not achieving their intended effect of minimizing pollutant discharges.” *Id.*, § 2.1.
16. Scrap Recycling and Waste Recycling Facilities Must Ensure that Stormwater Discharges Do Not Cause or Have the Reasonable Potential to Cause or Contribute To a Violation of Water Quality Standards. Stormwater Permit, § 2.2.
17. Citizens may bring an action to enforce these requirements. Section 505(a)(1) and Section 505(f) of the Act provide for citizen enforcement actions against any “person,” including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the Act is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500 per day, pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365 and 40 C.F.R. §§ 19.1 - 19.4.

STATEMENT OF FACTS

18. Defendant owns and operates a scrap and waste recycling facility at 120 Waverley Street, Framingham, Massachusetts (the "Facility").
19. On May 11, 2011 and again on May 2, 2012, Defendant submitted Notices of Intent to EPA that it intended operations at the Facility to be covered by the Stormwater Permit.
20. Numerous activities at the Facility take place outside and are exposed to rainfall. These include, without limitation, outdoor stockpiling of materials, transportation of materials, processing of materials, and material loading and unloading. Large piles of various types and sizes of scrap metal are stored and moved around throughout the Facility. These piles of scrap metal are exposed to precipitation.
21. Plaintiff is informed and believes, and thereupon alleges, that the operation, maintenance, and/or storage of heavy machinery and processing equipment results in spilling and leaking of contaminants such as oil, grease, diesel fuel, anti-freeze and hydraulic fluids, which leaves contaminants exposed to stormwater flows.
22. During rain events, stormwater running over the Facility becomes contaminated with pollutants.
23. Stormwater runoff from the Facility discharges to the Town of Framingham's municipal storm drain system and thence to Beaverdam Brook, the largest tributary of Lake Cochituate.
24. The Permit places benchmark standards on various pollutants as to which the Facility's management practices are inadequate, including standards for chemical oxygen demand ("COD"), aluminum, copper, iron and zinc.
25. Control measures taken at the Facility are inadequate to prevent such discharges from exceeding the Stormwater Permit's benchmark standards for COD, aluminum, copper, iron and zinc.
26. Framingham Salvage is required to monitor COD to indirectly measure the amount of organic compounds in its stormwater. Organic compounds act as a food source for water-borne bacteria. Bacteria decompose these organic materials using dissolved oxygen, thus reducing the

oxygen present for fish and aquatic organisms. Excessive COD can asphyxiate and kill fish by depriving them of oxygen.

27. Metals: copper, aluminum, zinc, and other metals at excessive concentrations are toxic to fish, aquatic plants, and other aquatic life. They may also be hazardous to human life if they enter the water supply.

28. Iron: Dissolved iron is bioavailable and can be toxic to fish and other aquatic life. Iron in the form of solid particulate can settle on the bottom of water bodies and destroy bottom-dwelling invertebrates, plants, or incubating fish eggs. Iron can also cause aesthetically objectionable conditions in water bodies by making the water appear rust colored.

CAUSE OF ACTION

Failure to Reduce and/or Eliminate Pollutants to the Extent Achievable: Violations of 33 U.S.C. § 1311(a)

29. Plaintiff re-alleges and incorporates Paragraphs 1-28, inclusive, as if fully set forth herein.

30. Since at the latest September 28, 2010, Framingham Salvage has failed to ensure that its control measures reduce and/or eliminate pollutants in its stormwater discharges to the extent achievable, using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice.

Stormwater Permit, section 2.0 (pg. 12).

31. Since at the latest September 28, 2010, defendant has failed to comply with the Stormwater Permit's requirement to modify its control measures as expeditiously as practicable whenever it finds that they "are not achieving their intended effect of minimizing pollutant discharges."

General Permit, section 2.1.

32. Since at the latest September 28, 2010, defendant has failed to take adequate corrective action, as set forth in Section 3.2, after the average of four quarterly sample results exceeded applicable benchmarks. To the extent corrective action was taken by the company following the

triggering of this event, such corrective action was inadequate, as evidenced by the persistent exceedence of the benchmarks.

33. As shown on plaintiff's Notice Letter, attached hereto as Exhibit A, Framingham Salvage's stormwater discharges have been significantly above EPA benchmark levels since, at the earliest, September 28, 2010. The presence and persistence of these exceedences shows that the company has not complied with its requirement to "modify" its control measures "as expeditiously as practicable" to minimize its pollutant discharges to the extent achievable.

34. Each of Defendant's violations of the reduction and/or elimination requirements of the Stormwater Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), for each day on which the violation occurred and/or continued. Alternatively, each of these violations is a separate and distinct violation for each day on which stormwater was discharged from the Facility and on which the failure to reduce and/or eliminate pollutants occurred and/or continued.

35. Defendant's violations are ongoing.

RELIEF REQUESTED

Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

1. Declare Defendant to have violated and to be in violation of the Act as alleged herein;
2. Enjoin Defendant from discharging pollutants from the Facility and to the wetlands and surface waters surrounding and downstream from the Facility;
3. Require Defendant to implement the requirements of the Stormwater Permit;
4. Order Defendant to pay civil penalties of up to \$37,500 per day of violation, pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a) and 78 Fed. Reg. 66647 (Nov. 6, 2013);
5. Order Defendant to take appropriate actions to restore the quality of navigable waters impaired by their activities;

6. Award Plaintiff's costs (including reasonable investigative, attorney, witness, and consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and
7. Award any such other and further relief as this Court may deem appropriate.

Dated: 3/16/2015

Respectfully submitted,

/s/Nora J. Chorover

NORA J. CHOROVER (Bar No. 547352)

Law Office of Nora J. Chorover

11 Green Street

Boston, MA 02130

617-477-3550

Attorney for Plaintiff

CLEAN WATER ACTION

CLEAN WATER ACTION'S CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure and Massachusetts District Court Local Rule 7.3, Plaintiff Clean Water Action states that it does not have a parent corporation and no publicly held company owns 10% or more of its stock.

**STERN
SHAPIRO
WEISSBERG
& GARIN LLP**
attorneys at law

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Of Counsel
John Taylor Williams
David L. Kelston

September 24, 2014

BY CERTIFIED MAIL

David Applebaum, President
United Salvage Corp. of America, a/k/a Framingham Salvage Corp.
120 Waverly St.
Framingham, MA 01701
Certified Mail # 7012 2210 0001 3554 3031

Re: 60-Day Notice of Violations and Intent to File Suit Regarding Noncompliance
with Federal Clean Water Act's Industrial Stormwater Discharge Requirements:
120 Waverley Street, Framingham MA

Dear Mr. Applebaum:

This office represents Clean Water Action, a national non-profit citizens' organization working for prevention of pollution in the nation's waters, protection of natural resources, creation of environmentally-safe jobs and businesses, and empowerment of people to make democracy work. Clean Water Action has over one million members nationally, more than 50,000 of whom reside in Massachusetts.

We write to give notice that Clean Water Action intends to file a civil action in the United States District Court for the District of Massachusetts under Section 505 of the Federal Clean Water Act (the "Act") against United Salvage Corp. of America, a/k/a Framingham Salvage Corp. ("Framingham Salvage"). The subject of the action will be Framingham Salvage's unlawful discharge of stormwater from its scrap recycling and waste recycling facility at 120 Waverley Street, Framingham (the "Facility"). Stormwater runoff from the Facility is discharged into Beaverdam Brook via the Town of Framingham's municipal storm drain system. Beaverdam Brook is the largest tributary of Lake Cochituate.

Framingham Salvage submitted a Notice of Intent ("NOI") to be covered by EPA's reissued Multi-Sector General Permit for Stormwater Discharges Associated with Industrial

Activity (the "Permit") on May 2, 2012.¹ However, since then Framingham Salvage has had a pattern of exceeding EPA benchmark limits, particularly for zinc, iron, copper, aluminum, and Chemical Oxygen Demand ("COD"). For the most part, concentrations of these parameters in the company's stormwater samples have not significantly declined since 2011. The ongoing nature of these exceedances shows that the company is not taking adequate corrective action. Furthermore, the company has failed to perform required inspections and submit annual reports to EPA, as required by the Permit.

BACKGROUND

Activities that take place at industrial facilities, such as material handling and storage, are often exposed to the weather. As runoff from rain or snowmelt comes into contact with these materials, it picks up pollutants and transports them to nearby rivers, lakes, or coastal waters and tributaries thereto, including but not limited to storm sewer systems, wetlands, and other surface waters. Stormwater pollution is a significant source of water quality problems for the nation's waters.

The following are *some* of the activities, pollutant sources and pollutants that may be present with Framingham Salvage's scrap recycling and waste recycling processes:

Activity	Pollutant Source	Pollutant
Stockpiling and storage of materials (including loading and unloading)	Leaking of various fluids from used automotive engines, radiators, brake fluid reservoirs, transmission housings, other vehicle parts, and lead-acid from batteries; Deterioration/corrosion of materials.	PCBs; oil and grease; lubricants; paint pigments or additives; heavy metals; ionizing radioactive isotopes; transmission and brake fluids; fuel; battery acid; lead acid; antifreeze; benzene; chemical residue; heating oil; petroleum products; solvents; ionizing radioactive isotopes; infectious/bacterial contamination; asbestos; metals; total Kjeldahl nitrogen (TKN); oily wastes; chemical residue.

¹ The Stormwater Permit expired on September 29, 2013, but has been administratively continued by its own terms.

Material processing: Air pollution equipment (including incinerators, furnaces, wet scrubbers, filter houses, and bag houses)	Normal equipment operations that include the collection and disposal of filter bag material and ash, process wastewater from scrubbers, accumulation of particulate matter around leaking joint connections, malfunctioning pumps and motors (e.g., leaking gaskets, seals or pipe connections, leaking oil-filled transformer casings).	Hydraulic fluids; oils; fuels; grease and other lubricants; accumulated particulate matter; chemical additives; and PCBs from oil-filled electrical equipment.
Material processing: Combustion engines	Spills and/or leaks from fuel tanks; spills/leaks from oil/hydraulic fuel reservoirs; faulty/leaking hose connections; worn gaskets; leaking transmissions, crankcases, and brake systems (if applicable); leaking battery casings and/or corroded terminals.	Accumulated particulate matter; oil/Lubricants; gas/diesel fuel; fuel additives; antifreeze (ethylene glycol); battery acid; and products of incomplete combustion.
Material processing: Material handling systems (forklifts, cranes, and conveyors)	Spills and leaks from fuel tanks, hydraulic and oil reservoirs due to malfunctioning parts (e.g., worn gaskets and parts, leaking hose connections, and faulty seals). Damaged or faulty electrical switches (mercury filled). Damaged or leaking battery casings, including exposed corroded battery terminals. Damaged or worn bearing housings.	Hydraulic fluids; oils, fuels and fuel additives; grease and other lubricants; accumulated particulate matter; chemical additives; mercury; lead; battery acid.
Material processing: Stationary scrap processing facilities (balers, briquetters, shredders, shearers, compactors, engine block/ cast iron breakers, wire chopper, turnings crusher)	Leaks from hydraulic reservoirs, hose and fitting connections; worn gaskets; spills or leaks from fuel tanks; particulates/residue from scrap processing; malfunctioning pumps and motors (e.g., leaking gaskets, seals or pipe connections, leaking oil- filled transformer casings).	Heavy metals (e.g., zinc, copper, lead, cadmium, chromium) and hydraulic fluids; PCBs.

Material processing: Hydraulic equipment and systems, balers/briquetter, shredders, shearers, compactors, engine block/cast iron breaker, wire chopper, turnings crusher	Particulate/residue from material Processing; spills and/or leaks from fuel tanks; spills/leaks from oil/hydraulic fuel reservoirs; faulty/leaking hose connections/fittings; leaking gaskets.	Hydraulic fluids/oils; lubricants; particulate matter from combustion engines; PCBs (oil-filled electrical equipment components); heavy metals (nonferrous, ferrous).
Material processing: Electrical control systems (transformers, electrical switch gear, motor starters)	Oil leakage from transformers; leakage from mercury float switches; faulty detection devices.	PCBs; mercury (float switches); ionizing radioactive material (fire/smoke detection systems).
Material processing: Torch cutting	Residual/accumulated particulates.	Heavy metal fragments, fines.
Material handling systems	Spills and/or leaks from fuel tanks; spills/leaks from oil/hydraulic fuel reservoirs; faulty/leaking hose connections/fittings; leaking gaskets.	Accumulated particulate matter (ferrous and nonferrous metals, plastics, rubber, other); oil/lubricants; PCBs (electrical equipment); mercury (electrical controls); lead/battery acids.
Vehicle maintenance	Parts cleaning; waste disposal of rags; oil filters; air filters; batteries; hydraulic fluids; transmission fluids; brake fluids; coolants; lubricants; degreasers; spent solvents.	Gas/diesel fuel; fuel additives; oil/lubricants; heavy metals; brake fluids; transmission fluids; chlorinated solvents; arsenic.
Vehicle fueling	Spills and leaks during fuel transfer; spills due to "topping off" tanks; runoff from fueling areas; washdown of fueling areas; leaking storage tanks; spills of oils; brake fluids; transmission fluids; engine coolants.	Gas/diesel fuel; fuel additives; oil; lubricants; heavy metals.
Vehicle and equipment cleaning and washing	Washing and steam cleaning.	Solvent cleaners; oil/lubricants/additives; antifreeze (ethylene glycol).

Clean Water Action will ask the Court to ensure Framingham Salvage's future compliance with the Act, assess civil penalties in an appropriate amount,² award plaintiff its litigation costs, including attorney and expert fees, and award any other relief the Court deems appropriate. Clean Water Action's complaint will be filed a minimum of 60 days after the postmark date of this letter. This is a formal 60-day notice of intent to sue that is being served pursuant to 40 C.F.R., Part 135.

This notice is being provided by:

Cindy Luppi, New England Regional Co-Director
Clean Water Action
262 Washington Street, Suite 301
Boston, MA 02108
(617) 338-8131
(617) 335-6449 (fax)

Counsel for Clean Water Action in this case is:
Nora J. Chorover
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90 Canal Street, Suite 500
Boston, MA 02114
(617) 742-5800
(617) 742-5858 (fax)

FRAMINGHAM SALVAGE'S VIOLATIONS AND DATES OF VIOLATIONS

Framingham Salvage's violations are described below and are also set forth on a Table attached as Exhibit A hereto.³ The Complaint, when filed, will set forth additional days of violations that occur between the date of this letter and the date on which the Complaint is filed.

² The Statute authorizes the Court to assess a penalty of up to \$37,500 a day for each violation. See 33 U.S.C. § 1319(d) and 78 Fed. Reg. 66647 (Nov. 6, 2013).

³ Clean Water Action believes that violations have occurred on the dates identified in this letter and on Exhibit A, and not just on rain days. However, to the extent it is determined that rain days are relevant in determining the dates of violations, such rain dates through September 23, 2014 are set forth on Exhibit B hereto. The complaint, when filed, will set forth additional rain dates since September 23, 2014.

1. Failure to Implement Adequate Control Measures and Corrective Action

The Permit requires Framingham Salvage to ensure that its control measures minimize its stormwater pollutant discharges. Permit, Section 2.0 (pg. 12).⁴ Framingham Salvage must modify its control measures as expeditiously as practicable whenever it finds that they “are not achieving their intended effect of minimizing pollutant discharges.” *Id.*, Section 2.1. Corrective action must be taken whenever the results of monitoring show that “an exceedance of the 4 quarter average is mathematically certain.”⁵ Documentation of corrective action must be included in the annual report.⁶

As shown on the following tables, Framingham Salvage’s stormwater discharges have been many magnitudes above the Permit’s benchmark levels since it began monitoring in June 2010.⁷

⁴ “Minimize” means “reduce and/or eliminate to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice.” *Id.*

⁵ Permit, pg. 19.

⁶ *Id.*

⁷ In August 2011, Framingham Salvage changed the value it used to calculate its compliance with Zinc, Copper, and Aluminum benchmarks. This calls into question whether Framingham Salvage complied with the procedures in Appendix J of the permit, which requires the hardness level to be representative of the facility’s receiving water. See Permit, App. J. In any event, Framingham Salvage’s discharges have been in significant exceedance of EPA benchmarks for Zinc, Copper, and Aluminum, regardless of which hardness level applies.

TABLE OF MONITORING RESULTS SHOWING BENCHMARK EXCEEDENCES

Values that are bolded and underlined indicate that it is mathematically certain that the rolling annual average value will exceed or has exceeded the applicable benchmark.

<u>Collection Quarter</u>	<u>Collection Date</u>	<u>Zinc (.26 mg/L)</u>	<u>Iron (1.0 mg/L)</u>	<u>Copper (.0332 mg/L)</u>	<u>Aluminum (.75 mg/L)</u>	<u>COD (120 mg/L)</u>
July-Sept 2013	9/10/2013	<u>0.73</u>	<u>4.9</u>	<u>0.03</u>	<u>0.42</u>	<u>110</u>
April-June 2013	6/3/2013	<u>2.1</u>	<u>5.6</u>	<u>0.06</u>	<u>0.83</u>	<u>290</u>
Jan-March 2013	3/12/2013	<u>5.0</u>	<u>176</u>	<u>0.08</u>	<u>1.7</u>	<u>520</u>
Oct-Dec 2012	12/10/2012	<u>0.36</u>	<u>11</u>	<u>0.06</u>	<u>1.3</u>	<u>210</u>
July-Sept 2012	9/18/2012	<u>0.17</u>	<u>1.7</u>	<u>0.01</u>	<u>0.19</u>	<u>72</u>
April-June 2012	6/22/2012	<u>0.54</u>	<u>9.5</u>	<u>0.08</u>	<u>1.3</u>	<u>110</u>
Jan-March 2012	3/13/2012	<u>0.22</u>	<u>2.02</u>	<u>0.02</u>	<u>0.31</u>	<u>237</u>
Oct-Dec 2011	12/21/2011	<u>0.61</u>	<u>5.93</u>	<u>0.06</u>	<u>0.94</u>	<u>235</u>
July-Sept 2011	9/20/2011	<u>0.59</u>	<u>9.27</u>	<u>0.09</u>	<u>2.13</u>	<u>230</u>
	8/11/2011	<u>0.46</u>	<u>7.73</u>	<u>0.08</u>	<u>1.75</u>	<u>14100</u>
April-June 2011	4/1/2011	<u>2.3</u>	<u>7.6</u>	<u>0.03</u>	<u>0.4</u>	<u>370</u>
July-Sept 2010	9/28/2010	<u>1.6</u>	<u>14</u>	<u>0.11</u>	<u>1.6</u>	<u>160</u>
April-June 2010	6/1/2010	<u>0.51</u>	<u>11.4</u>	<u>0.03</u>	<u>0.87</u>	<u>0.29</u>

The presence and persistence of these exceedences show that the company has not complied with the requirement to "modify" its control measures "as expeditiously as practicable" to minimize its pollutant discharges.⁸

This Notice Letter alleges that Framingham Salvage failed to implement adequate control measures based on information presently available to Clean Water Action. If additional information regarding this violation becomes known to Clean Water Action in the future, the complaint may set forth some or all of such additional information.

2. Failure to Comply with the Permit's Inspection and Reporting Requirements

Framingham Salvage is required to submit an annual report to EPA regarding the findings from its annual comprehensive site inspections and any corrective actions that may be required. If the corrective action has not been completed at the time of the report, a description must be given to the EPA regarding the status of the outstanding corrective actions.⁹ Framingham Salvage has not submitted annual reports to EPA as required by the Permit, a violation as set forth in Exhibit A.

Framingham Salvage is required to report certain information to EPA and the Massachusetts Department of Environmental Protection ("Mass DEP") regarding its stormwater discharges in accordance with the provisions of Section 7 of the Permit. Among other things, Framingham Salvage must submit quarterly benchmark monitoring data to EPA. See Permit, Section 7.1.¹⁰

Benchmark monitoring reports were to have been filed with EPA 30 days following receipt of monitoring results. Framingham Salvage failed to comply with this requirement for the April – June quarter of 2010, the July – September quarter of 2010, the October – December quarter of 2010, the January – March quarter of 2011, the April – June quarter of 2011, the July – September quarter of 2011, the October – December quarter of 2011, the January – March quarter of 2012, the April – June quarter of 2012, the July – September quarter of 2012, the October – December quarter of 2012, the January – March quarter of 2013, the April – June

⁸ Moreover, the permit requires the company to implement corrective action as set forth in Section 3.2 whenever the average of 4 quarterly sample results exceeds an applicable benchmark. To the extent corrective action was taken by the company following the triggering of this event, such corrective action was inadequate, as shown by the fact that benchmark exceedences have persisted.

⁹ See Permit, Section 7.2, pg. 41.

¹⁰ If the data contains any exceedences of benchmarks, it must also be submitted to Mass DEP. See Permit, Section 9.1.2.4.

Framingham Salvage

9/24/2014

Page 9

quarter of 2013, the July – September quarter of 2013, and the October – December quarter of 2013, according to our records. These failures are set forth on Exhibit A.

To the extent additional reporting violations become known to Clean Water Action before the action is filed, the complaint will seek remedy for such additional reporting violations. To the extent additional reporting violations are learned through discovery in this action, the complaint will be amended to seek remedy for such additional reporting violations.

CONCLUSION

Clean Water Action believes this Notice of Violations and Intent to File Suit sufficiently states the basis for a civil action. During the 60-day notice period, we would be willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of litigation. If you wish to pursue such discussions, please have your attorney contact us within the next 20 days so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Nora J. Chorover

Attorney for

CLEAN WATER ACTION

cc: (by certified mail)

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Framingham Salvage

9/24/2014

Page 10

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EXHIBIT A

TABLE OF FRAMINGHAM SALVAGE'S VIOLATIONS

June 2010 to the Present

Requirements applicable to Sector N – Scrap Recycling and Waste Recycling Facilities

<u>Type of Violation</u>	<u>Parameter</u>	<u>Beginning Date of Violation</u>	<u>Earliest End Date of Violation</u>
Failure to Implement Adequate Measures	Zinc	July 31, 2010	Present
Failure to Implement Adequate Measures	Iron	July 31, 2010	Present
Failure to Implement Adequate Measures	Copper	July 31, 2010	Present
Failure to Implement Adequate Measures	Aluminum	July 31, 2010	Present
Failure to Implement Adequate Measures	COD	July 31, 2010	Present
Failure to Conduct Required Comprehensive Site Inspections	n/a	September 29, 2010	Present
Failure to Conduct Required Comprehensive Site Inspections		September 29, 2011	Present
Failure to Conduct Required Comprehensive Site Inspections		September 29, 2012	Present
Failure to Conduct Required Comprehensive Site Inspections		September 29, 2013	Present
Failure to Submit Annual Reports	n/a	November 13, 2010	Present
Failure to Submit Annual Reports		November 13, 2011	Present
Failure to Submit Annual Reports		November 13, 2012	Present
Failure to Submit Annual Reports		November 13, 2013	Present
Failure to Report Results of Benchmark Monitoring; April – June QTR 2010	All	July 1, 2010	August 1, 2012
Failure to Report Results of Benchmark Monitoring; July – Sept QTR 2010	All	October 28, 2010	August 1, 2012
Failure to Conduct Benchmark Monitoring; Oct – Dec QTR 2010	All	December 31, 2010	Present
Failure to Report Results of Benchmark Monitoring; Oct – Dec QTR 2010	All	January 31, 2011	Present
Failure to Conduct Benchmark Monitoring; Jan – Mar QTR 2011	All	March 31, 2011	Present
Failure to Report Results of Benchmark Monitoring; Jan – Mar QTR 2011	All	April 30, 2011	Present
Failure to Report Results of Benchmark Monitoring; April – June QTR 2011	All	May 1, 2011	August 1, 2012
Failure to Report Results of Benchmark Monitoring; July – Sept QTR 2011	All	September 11, 2011	August 1, 2012
Failure to Report Results of Benchmark Monitoring; July – Sept QTR 2011	All	October 20, 2011	August 1, 2012
Failure to Report Results of Benchmark Monitoring; Oct – Dec QTR 2011	All	January 21, 2012	August 1, 2012
Failure to Report Results of Benchmark Monitoring; Jan – Mar 2012	All	April 13, 2012	August 1, 2012
Failure to Report Results of Benchmark Monitoring; April – June QTR 2012	All	June 22, 2012	August 1, 2012

<u>Type of Violation</u>	<u>Parameter</u>	<u>Beginning Date of Violation</u>	<u>Earliest End Date of Violation</u>
Failure to Report Results of Benchmark Monitoring; July – Sept QTR 2012	All	October 18, 2012	November 15, 2012
Failure to Report Results of Benchmark Monitoring; Oct – Dec QTR 2012	All	January 10, 2013	May 15, 2013
Failure to Report Results of Benchmark Monitoring; Jan – Mar QTR 2013	All	April 12, 2013	May 15, 2013
Failure to Report Results of Benchmark Monitoring; April – June QTR 2013	All	July 3, 2013	November 6, 2013
Failure to Report Results of Benchmark Monitoring; July – Sept QTR 2013	All	October 10, 2013	November 6, 2013
Failure to Conduct Benchmark Monitoring; Oct – Dec QTR 2013	All	December 31, 2013	Present
Failure to Report Results of Benchmark Monitoring; Oct – Dec QTR 2013	All	January 31, 2014	Present

EXHIBIT B

DAYS BETWEEN SEPTEMBER 23, 2009 AND SEPTEMBER 23, 2014 ON WHICH STORMWATER FROM FACILITY DISCHARGED TO WATERS OF THE UNITED STATES

September 2009:	27, 28, 29
October 2009:	4, 7, 8, 10, 14, 16, 19, 24, 25, 28, 29
November 2009:	14, 15, 21, 24, 27, 28
December 2009:	1, 3, 4, 6, 9, 10, 14, 20, 21, 27, 28
January 2010:	1, 3, 18, 19, 26
February 2010:	11, 17, 24, 25, 26, 27
March 2010:	1, 14, 15, 16, 23, 24, 26, 29, 30, 31
April 2010:	10, 16, 17, 18, 19, 27, 28
May 2010:	8, 9, 19, 20, 27, 30
June 2010:	1, 2, 5, 7, 10, 13, 21, 23, 25
July 2010:	11, 17, 24, 25
August 2010:	6, 10, 16, 23, 24, 25, 26
September 2010:	4, 9, 17, 29
October 2010:	2, 4, 6, 7, 15
November 2010:	5, 6, 8, 9, 10, 17
December 2010:	2, 13, 23, 27
January 2011:	12, 13, 19, 20, 21, 22, 27
February 2011:	2, 3, 6, 8, 19, 25, 26, 27
March 2011:	1, 7, 12, 17, 22
April 2011:	1, 5, 13, 14, 17, 20, 24
May 2011:	5, 8, 15, 16, 18, 19, 20, 24
June 2011:	2, 10, 12, 18, 23, 24, 25, 26
July 2011:	9, 14, 24, 26, 30
August 2011:	7, 8, 10, 15, 16, 22, 28, 29
September 2011:	6, 7, 8, 9, 16, 21, 24, 29, 30
October 2011:	1, 4, 5, 13, 14, 15, 20, 27, 28, 30
November 2011:	11, 17, 18, 23, 24, 30
December 2011:	7, 8, 22, 23, 28
January 2012:	12, 13, 17, 20, 22, 24, 27, 28
February 2012:	25
March 2012:	1, 2, 3, 4
April 2012:	1, 2, 13, 23, 24
May 2012:	2, 9, 10, 15, 16, 22, 23, 30
June 2012:	2, 3, 5, 8, 13, 14, 23, 26
July 2012:	3, 4, 5, 19, 29
August 2012:	1, 6, 11, 16, 18, 29
September 2012:	5, 6, 9, 16, 19, 29

October 2012:	8, 11, 20, 29, 30, 31
November 2012:	8, 9, 14, 28
December 2012:	8, 10, 17, 18, 19, 22, 27, 28, 30
January 2013:	12, 16, 17, 31
February 2013:	9, 12, 20, 24, 25, 27, 28
March 2013:	7, 8, 9, 13, 19, 20
April 2013:	2, 11, 12, 13, 20
May 2013:	9, 10, 22, 24, 25, 26, 29
June 2013:	3, 4, 5, 6, 7, 8, 11, 12, 14, 18, 19, 28
July 2013:	12, 23, 24, 26, 27, 30
August 2013:	2, 10, 27
September 2013:	1, 2, 3, 13, 22
October 2013:	5, 6, 7, 8
November 2013:	8, 18, 23, 27, 28
December 2013:	2, 7, 10, 15, 18, 24, 30
January 2014:	3, 6, 7, 12, 15, 19, 22
February 2014:	4, 5, 6, 14, 16, 19, 20, 21, 22
March 2014:	13, 20, 30, 31
April 2014:	1, 5, 8, 9, 15, 16, 24, 27
May 2014:	1, 17, 23, 28, 31
June 2014:	4, 6, 14, 17, 26
July 2014:	4, 5, 14, 15, 16, 17, 28, 29
August 2014:	7, 13, 14, 15
September 2014:	1, 3, 7, 14, 21